

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 21-cr-11 (JRT/TNL)

Plaintiff,

v.

ORDER

Josbel Elizar Araujo Castillo,

Defendant.

This matter comes before the Court on Defendant Josbel Elizar Araujo Castillo's Motion to Extend Dates (ECF No. 35) and Motion to Exclude Time Under the Speedy Trial Act (ECF No. 36). Defendant has also filed a Statement of Facts in Support of his Motion for Extension of Time to File Motions. (ECF No. 37.) Defendant requests an approximately eight-week continuance of the deadline to file motions and corresponding dates, including his motions hearing date and trial date. (ECF No. 35 at 1.) Defendant requests this continuance on the basis that he needs additional time to review discovery with counsel and, due to COVID-19, in-person visits at the facility where he is detained "have been curtailed." (*Id.*) Additionally, all communication between Defendant and defense counsel must be conducted through an interpreter. (*Id.*) The Government has no objection to the requested continuance. (*Id.*; *see also* ECF No. 36 at 1.)

As previously stated, beginning on March 13, 2020, and continuing thereafter, the Honorable John R. Tunheim, Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the

COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.¹ On April 29, 2021, Chief Judge Tunheim entered General Order No. 28, which allows limited in-person proceedings to start on May 3, 2021, for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 28 (D. Minn. Apr. 29, 2021). General Order No. 28 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 28 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant's consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.² General Order No. 28 further provides that the presiding judge will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19.

The Court inquired whether Defendant consented to conducting the criminal motions hearing using videoconferencing. (ECF No. 19.) Defendant indicated through counsel that he consents to videoconferencing for the criminal motions hearing. (ECF No.

¹ All General Orders related to the COVID-19 pandemic may be found on the Court's website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

² *See also* General Order No. 29, which went into effect on June 23, 2021, vacated General Order No. 27, and extended the Court's authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act "[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota." *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 29 (D. Minn. June 17, 2021).

20.) Consistent with the health and safety protocols of this Court and the facility in which Defendant is detained, the criminal motions hearing will be held by videoconference and is continued to November 9, 2021.

Pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting such a continuance outweigh the best interests of the public and Defendant in a speedy trial and such continuance is necessary to provide Defendant and his attorney reasonable time necessary for effective preparation and to make efficient use of the parties' resources. Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion to Extend Dates (ECF No. 35) and Motion to Exclude Time Under the Speedy Trial Act (ECF No. 36) are **GRANTED**.
2. The period of time from **July 22 through November 9, 2021**, shall be excluded from Speedy Trial Act computations in this case.
3. All motions in the above-entitled case must be filed and served consistent with Federal Rules of Criminal Procedure 12(b) and 47 on or before **September 30, 2021**. D. Minn. LR 12.1(c)(1).
4. **Counsel must electronically file a letter on or before September 30, 2021, if no motions will be filed and there is no need for hearing.**
5. All responses to motions must be filed by **October 14, 2021**. D. Minn. LR 12.1(c)(2).
6. Any Notice of Intent to Call Witnesses must be filed by **October 14, 2021**. D. Minn. LR 12.1(c)(3)(A).
7. Any Responsive Notice of Intent to Call Witnesses must be filed by **October 19, 2021**. D. Minn. LR 12.1(c)(3)(B).
8. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- a. The Government makes timely disclosures and a Defendant identifies in the motions particularized matters for which an evidentiary hearing is necessary; or
 - b. Oral argument is requested by either party in its motion, objection or response pleadings.
9. If required, the motions hearing must be heard before Magistrate Judge Tony N. Leung on **November 9, 2021, at 10:00 a.m., and will occur by Zoom videoconferencing technology.** D. Minn. LR 12.1(d). Login information will be provided to counsel closer to the hearing date.

10. TRIAL:

- a. **IF NO PRETRIAL MOTIONS ARE FILED BY DEFENDANT: the following trial and trial-related dates are:**

All voir dire questions and jury instructions must be submitted to Chief District Judge John R. Tunheim on or before **December 6, 2021.**

This case must commence trial on **December 13, 2021, at 9:00 a.m.** before Chief District Judge John R. Tunheim in Courtroom 15, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS,** Minnesota.

- b. **IF PRETRIAL MOTIONS ARE FILED, the trial date, and other related dates, will be rescheduled following the ruling on pretrial motions. Counsel must contact the Courtroom Deputy for District Judge Tunheim to confirm the new trial date.**

Dated: July 27, 2021

s/Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

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